

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILLIP C. LATHROP,

Defendant.

ORDER

12-cv-28-bbc

08-cr-124-bbc

On April 9, 2012, I denied defendant Phillip C. Lathrop's motion for post conviction relief under 28 U.S.C. § 2255 for his failure to show that either his conviction or sentence is illegal. In the same order, I also denied the issuance of certificate of appealability under the newly effective amendments to Rule 11 of the Rules Government Section 2255 Cases in the United States District Courts.

Thereafter, defendant filed a motion for a certificate of appealability with the court of appeals. The court of appeals forwarded the motion to this court for processing as a notice of appeal so that the court of appeals could then consider defendant's motion for a certificate of appealability.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant’s challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

Defendant Phillip Lathrop’s motion to proceed in forma pauperis on appeal is GRANTED. A copy of this order will be forwarded to the court of appeals along with a copy of this order so that it can address the appeal of the denial of the certificate of appealability.

Entered this 30th day of April, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge